IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.317 OF 2006

Shree Warana Sahakari Dudh Utpadak
Prakriya Sangh Ltd. & others .. Petitioners
v/s.
The Union of India and another. .. Respondents

Mr.E.P.Bharucha, Senior Counsel with Mr.M.P.Baxi, Mrs.Kashmira Bharucha, Mr.Tushar Tijoriwala and Mrs.Ketki Tijoriwala i/by M/s.Tijoriwala & Co. for the petitioners.

Mr.B.A.Desai, Additional Solicitor General of India with Mr.A.S.Rao, Mr.Y.R.Mishra, and Mr.Y.S.Bhate for the respondents.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 18TH MARCH, 2006.

P.C.

After arguing the writ petition for some time, Mr.E.P.Bharucha, the learned senior counsel for the petitioners prayed for withdrawal of the writ petition with liberty to the first petitioner to challenge the order in original dated 16.1.2006 passed by the Deputy Commissioner of Central Excise,

Kolhapur-II Division, Kolhapur in appeal and also liberty to the second petitioner to pursue the application dated January 19, 2006 for refund made by it under section 11B of the Central Excise Act, 1944. Mr.Bharucha, the learned senior counsel for the petitioner submitted that the contentions raised in the writ petition may be kept open to be agitated at an appropriate stage.

2. We are informed that the limitation for filing statutory appeal against the order in original dated 16.1.2006 expired two days back and in this backdrop, the learned senior counsel for the petitioners prays that delay in filing the appeal against the order dated 16.1.2006 may also be condoned.

3. The learned senior counsel for the petitioners further submitted that the ad-interim order passed by this court on 25th January, 2006 may be ordered to remain operative for some time to enable the first petitioner to apply for interim relief to the appellate authority.

4. Mr.B.A.Desai, the learned Additional Solicitor General of India did not object to the course suggested by the learned senior counsel for the petitioner but submitted that no prejudice will be caused to the petitioners if the eligible refund amount as ordered by the Deputy Commissioner is transferred to the Consumer Welfare Fund as according to him, if the first

petitioner succeeds in appeal or the second petitioner succeeds in the refund application, the amount so transferred can always be retrieved.

5. Having considered the submissions of the learned senior counsel and the learned Additional Solicitor General of India, we are satisfied that the writ petition may be disposed of by the following order:-

(i) The writ petition is allowed to be withdrawn.

(ii) The first petitioner shall be at liberty to challenge the order in original dated 16.1.2006 in appeal under section 35 of the Central Excise Act.

(iii) If the appeal is filed by the first petitioner against the order dated 16.1.2006 within two weeks from today, the delay, if any, in filing the appeal shall stand condoned.

(iv) For a period of four weeks, the ad-interim order passed by this court on 25th January, 2006 shall remain operative to enable the first petitioner to apply for interim relief to the Commissioner

(appeals). It is clarified that the continuation of the ad-interim order dated 25th January, 2006 is only by way of an adhoc arrangement and this shall not influence the consideration of the prayer for interim relief by the appellate authority.

(v) The application made by the second petitioner on 19th January, 2006, claiming refund under section 11B of the Central Excise Act, 1944 shall be considered by the respondent No.2 in accordance with law.

3. All contentions raised by the petitioners in the writ petition are kept open to be agitated at the appropriate stage including the challenge to the constitutionality of explanation (B)(e) to section 11B of the Central Excise Act, 1944.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)